

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 5598 OF 2005

Relene Petrochemicals Pvt.Ltd. ... Petitioner.

V/s.

1. Shri Sunil Sudhakar Sathe.

2. National Organic Chemical
Industries Ltd.

3. National Organic Chemical
Ltd. Employees Union.

4. Polyolefins Industries Ltd.
Employees' Union.

... Respondents.

C.U.Singh, senior counsel with M.D'Souza i/b.
A.S.Dayal & Associates for the petitioner.

Sunil Bhakre for respondent No.1.

Smt.Gayatri Singh for respondent No.3.

CORAM:

V.C. DAGA, J.

RESERVED ON :

13th December 2005.

PRONOUNCED ON :

30th January 2006.

P.C.:

. This petition is directed against the order dated 8th July, 2005 passed by the Industrial Court, Thane below Exhs.19 and 20 in Complaint (ULP) No.118 of 2005 refusing to consider the objection raised by the respondent regarding maintainability of the complaint which centers around the question of limitation and existence of employer-employee

relationship between the complainant and the respondents at the preliminary stage of the complaint. The basic facts are not in dispute. They need no reproduction for the view taken herein.

Rival Submissions :

2. Mr.C.U.Singh, learned senior counsel, appearing for the petitioner urged that it is a well settled law that there must be an existing employer-employee relationship between the parties for a complaint under section 28 of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 ("MRTU & PULP Act" for short) to make the complaint maintainable and sustainable. In absence thereof there is no lawful basis for the respondent No. 1 to maintain a complaint of unfair labour practices against the petitioner/ employer.

3. Mr.Singh submits that where employer-employee relationship is not admitted by the employer and the same is disputed on the basis of material on record or where a complainant, admittedly, never had a relationship of master and servant with the respondent against whom reliefs are sought, is not maintainable under the MRTU & PULP

Act. He sought to place reliance on the various judgments of this Court as well as that of Supreme Court, categorised hereinbelow:

(i) **Hindustan Coca-Cola Bottling Pvt.Ltd. v. Bharatiya Kamgar Sena**, 2001-III CLR 1025 (Bom-DB);

(ii) **Lokmat Newspapers v. Rambhauji Chaudhary**, 2003-I CLR 555 (Bom);

Prabha

(iii) **CIPLA Limited v. Maharashtra General Kamgar Union**, 2001-I CLR 754:(2001) 3 SCC 101;

(iv) **Sarva Shramik Sangh v. Smelting & Refining Company**, 2003-III CLR 949:(2003) 10 SCC 455.

In

4. Based on the aforesaid judgments, he reiterates that the learned Industrial Court has no jurisdiction to entertain and try the complaint of unfair labour practices filed by a person in the alleged capacity of an "employee", without first establishing his relationship as an employee of the purported employer, and that in respect of persons who seek to establish employer-employee relationship which is, admittedly, not in existence, the Industrial Court cannot embark on an exercise of adjudication to determine the employer-employee relationship between the complainant and the respondent company (petitioner herein).

5. Mr.Singh further submits that the disputed issue with regard to the existence of employer-employee relationship can only be tried in a reference made under the Industrial Disputes Act, 1947 ("I.D.Act" for short) and not under the MRTU and PULP Act.

6. Mr.Singh further submits that the compliant filed by respondent No.1 is barred by limitation, even though it is held to be maintainable, as the same is filed beyond a period of 90 days from the day on which the cause of action arose that too without any application for condonation of delay.

7. Per contra, learned counsel appearing for respondent No.1 submits that this is not a fit case to exercise writ jurisdiction under Article 226 of the Constitution of India at this stage of proceedings. He submits that the Court below, prima facie; found that complaint is maintainable and left the said question for consideration in detail after recording evidence of the parties. He, thus, submits that the decision to postpone the decision on the adjudication raised by the complainant is an outcome of exercise of discretion exercised by the trial Court which is based on the legal principles laid

down by the Apex Court from time to time, as such this is not a fit case; wherein this Court should intervene at this stage of the litigation. He, thus, tried to support the impugned order and also tendered his written submissions on record.

8. Mrs. Gayatri Singh, learned counsel appearing for respondent No.3- Union also chose to file detailed written submissions. So far as maintainability of the complaint is concerned, she submits that section 2(s) of the I.D. Act which defines workman is an exhaustive definition and excludes only specific categories being (i); (ii); (iii); and (iv) of section 2(s). Thus, if a person falls under any of these categories he will not be a workman. For example, if he is working as a Manager, or in administrative capacity or as supervisor earning wages exceeding Rs.16,000/- per month, he would not be a workman. In her submission, respondent No.1 is a workman. She submits that the definition of 'workman' does not contemplate that the workman must be employed at a particular moment of time. Employment could be in the past, present or future but it must be in an industry. Prospective employment, is also contemplated in the said definition.

9. In her submission, in the present case under the Memo of Understanding (MOU) the workman was required to be given employment if found medically fit. This was the only precondition for employment and the petitioner had no discretion to refuse. That by not proving him with employment the petitioner committed breach of settlement. It was the case of the workman before the Industrial Court that he was medically fit and that he had complied with all the terms and conditions of MOU and that it was the company who had committed breach of settlement since the company has refused to take him on duty. The dispute was not whether he was a workman or not but whether he was medically fit; and whether or not there was any breach of the settlement. That non-employment may relate to an existing employment or to a contemplated employment. If a person satisfies the definition of "workman" under section 2(s), then whether he can raise an industrial dispute or not must be judged by the definition "industrial dispute" given in section 2(k). Thus, in her submission, in order to determine whether or not an industrial dispute has been properly raised, one must read sections 2(k) and 2(s) in conjunction, as held in the number of cases. She, thus, submits that the Industrial Court, therefore, has jurisdiction to hear

the complaint filed under the MRTU & PULP Act. Mrs.Singh relied upon the judgment of the Supreme Court in the case of **Workmen of Dimakuchi Tea Estate (Assam Chah Karmachari Sangha) and Dimakuchi Tea Estate**, 1958 1 LLJ 500; in support of her submission; wherein it was held as under:

"To summarize: Having regard to the scheme and objects of the Act and its other provisions, it was held that the expression "any person" in S.2(k) of the Act must be read subject to such limitations and qualifications as arise from the context: the two crucial limitation are:

(1) the dispute must be real dispute between the parties to the dispute (as indicated in the first two parts of the definition clause) so as to be capable of settlement or adjudication by one party to the dispute giving necessary relief to the other,

(2) the person regarding whom the dispute is raised must be one in whose employment, non-employment, terms of employment, or conditions of labour (as the case may be) the parties to the dispute have a direct or substantial interest."

10. Mrs.Singh submits that in the case of **Ceat Ltd v. Anand Aba Saheb Hawaldar**, 2001 III CLR 434, a complaint under item No.9 of Schedule IV was filed by certain employees who had resigned from the company and had accepted VRS. The maintainability of the complaint was challenged by the company on the ground that the employees had ceased to be employed in the

industry. The learned single Judge of this Court held that certain rights had accrued to them under an agreement entered into by them when in employment and that they could, therefore, enforce their right under the agreement.

11. Mrs.Singh further submits that in the case of **ICI India Ltd. v. Presiding Officer and ors,** 1993 1 CLR 753, a case of non-payment of certain pensionary benefits to employees who had retired/resigned, the learned single Judge of this Court held that a person in respect of whom the contract of employment has ceased to exist could also raise an industrial dispute.

12. Mrs.Singh, learned counsel for respondent No.3 further submits that as per the law laid down by the Apex Court and followed by this Court, the preliminary issue must be tried along with merits of the case. In support of her submission she relied on the Supreme Court judgment in the case of **D.P. Maheshwari v. Delhi Administration,** (1983) 4 SCC 293; wherein it was held that the Tribunal must dispose of all the issues whether preliminary or otherwise, at the same time. The Apex Court in **National Council for Cement and Building Materials v.**

State of Haryana, (1996) 3 SCC 206 held that preliminary and main issues should be tried together. In **Rajiv Bhalchandra Gundewar v. Crompton Greaves Ltd.**, 2000 (85) FLR 602; an objection was raised that the petitioner was not a workman under the Act. The learned single Judge of this Court held that all issues must be tried together.

13. So far as delay is concerned, learned counsel for respondent No.3 submitted that there is no delay in filing the complaint. The offence complained is of a continuing nature, as such both the preliminary objections need to be heard together at the time of final disposal of the complaint.

The Issue :

14. Now the issue for consideration before this Court is: whether the Industrial Court was justified in exercising its discretion in the manner in which it has been exercised.

Consideration :

15. Having heard rival parties and having examined the impugned order, it is not in dispute that the trial Court did not conclude the issue with

respect to the maintainability of the complaint. The trial Court has, specifically, said that the said issue needs to be considered by considering evidence which can only be done at the time of final hearing of the complaint.

16. The Industrial Court has not considered the merits of the preliminary issues. In that view of the matter, it is necessary to consider the question: whether or not the discretion to postpone consideration of the preliminary objections has been reasonably, properly and judiciously exercised.

17. In order to determine the above question, it would be profitable to turn to the Apex Court judgment in the case of **National Council for Cement and Building Materials** (supra); wherein the approach of the Tribunal to hear and decide preliminary issues along with other issues on merits, at the later stage of the proceedings, has been approved by the Apex Court in the following words:

"11. comes up before the Industrial Tribunal, the establishment, in order to delay the proceedings, raises the dispute whether it is an 'industry' as defined in Section 2(j); or whether the dispute referred to it for adjudication is an "industrial dispute" within the scope of Section 2(k)

Usually, whenever a reference

and also whether the employees are 'workmen' within the meaning of Section 2(s). A request is made with that these questions may be determined as preliminary issues so that if the decision on these questions are in the affirmative, the Tribunal may proceed to deal with the real dispute on merits.

12.

eyes to the appalling situation created by such preliminary issues which take long years to settle as the decision of the Tribunal on the preliminary issue is immediately challenged in one or the other forum including the High Court and proceedings in the reference are stayed which continue to lie dormant till the matter relating to the preliminary issue is finally disposed of.

We, however, cannot shut o

13.

Engineering Ltd. v. P.P.Mundhe, (1975) 2 SCC 661 in order to obviate undue delay in the adjudication of the real dispute, observed that the Industrial Tribunals should decide the preliminary issues as also the main issues on merits altogether so that there may not be any further litigation at the interlocutory stage. It was further observed that there was no justification for a party to the proceedings to stall the final adjudication of the dispute referred to the Tribunal by questioning the decision of the Tribunal on the preliminary issue before the High Court.

This Court

14.

Chandra, (1983) 4 SCC 214, this Court strongly disapproved the practice of raising frivolous preliminary objections at the instance of the employer to delay and defeat the purpose of adjudication on merits.

Again in *S.K.Verma v. Mah*

15.

Admn., (1983) 4 SCC 293 this Court speaking through O.Chinnappa Reddy, J. observed that the policy to decide the preliminary issue required a reversal in view of the "unhealthy and injudicious practices

In *D.P.Maheshwari v.*

resorted to for unduly delaying the adjudication of industrial disputes for the resolution of which an informal forum and simple procedure were devised with avowed object of keeping them from the dilatory practices of civil courts". The Court observed that all issues whether preliminary or otherwise, should be decided together so as to rule out the possibility of any litigation at the interlocutory stage. To the same effect is the decision in *Workmen v. Hindustan Lever Ltd.*, (1983) 4 SCC 192.

16. The facts in the instant case indicate that the appellant adopted the old tactics of raising a preliminary dispute so as to prolong the adjudication of industrial dispute on merits. It raised the question whether its activities constituted an 'Industry' within the meaning of the Industrial Disputes Act and succeeded in getting a preliminary issue framed on that question. The Tribunal was wiser. It first passed an order that it would be heard as a preliminary issue, but subsequently, by change of mind, and we think rightly, it decided to hear the issue along with other issues on merits at a later stage of the proceedings. It was at this stage that the High Court was approached by the appellant with the grievance that the Industrial Tribunal, having once decided to hear the matter as a preliminary issue, could not change its mind and decide to hear that issue along with other issues on merits. The High Court rightly refused to intervene in the proceedings pending before the Industrial Tribunal at an interlocutory stage and dismissed the petition filed under Article 226 of the Constitution. The decision of the High Court is fully in consonance with the law laid down by this Court in its various decisions referred to above and we do not see any occasion to interfere with the order passed by the High Court. The appeal is dismissed, but without any order as to costs.

18. Having noticed the above, can this Court find fault with the discretion exercised by the Industrial Court. Let me, therefore, examine this aspect on the basis of law laid down by the Apex Court in the case of **U.P.Co-operative Federation Ltd. v. Sunder Bros.**, AIR 1967 SC 249; wherein the parameters of the exercise of the powers of judicial review, especially, in case of discretionary orders, have been laid down in the following words:

"..... In dealing with the matter raised before it at the appellate stage, the appellate Court would normally not be justified in interfering with the exercise of the discretion under appeal solely on the ground that if it had considered the matter at the trial stage it may have come to a contrary conclusion. If the discretion has been exercised by the trial Court reasonably and in a judicial manner the fact that the appellate Court would have taken a different view may not justify such interference. If it appears to the appellate Court that in exercising its discretion the trial Court has acted unreasonably or capriciously or has ignored relevant facts, then it would be open to the appellate Court to interfere with the trial Court's exercise of discretion."

19. A piecemeal decision on the issues always results in protracting litigation and, in order to avoid that, it is always advantageous that all the issues are decided together. In this view of the matter, no fault can be found with the approach

adopted and discretion exercised by the Industrial Court.

20. Since the Industrial Court did not address itself on the merits of the matter and has only recorded prima facie findings, reserving its rights to deal with the issues on merits after recording evidence, I do not propose to deal with the merits of the matter though both parties chose to argue the matter on merits in *extenso*. The petition is devoid of any substance.

21. In the result, petition is dismissed in *limine* with no order as to costs.

22. At this stage, the learned counsel appearing for the petitioner prays for extension of interim relief which is already operating in favour of the petitioner.

. Heard rival parties.

. In the interest of justice, interim relief granted vide order dated 29th September, 2005 stands extended for further four weeks from today.

(V.C.DAGA, J.)